

1 GARY R. GOODHEART, ESQ.
2 Nevada Bar No. 1203
3 JONES VARGAS
4 3773 Howard Hughes Parkway
5 Third Floor South
6 Las Vegas, Nevada 89169
7 Telephone: (702) 862-3300
8 Facsimile: (702) 737-3305
9 grg@jonesvargas.com
10 Attorneys for Non-Party
11 Deborah A. Klar

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 DENNIS MONTGOMERY, and the
10 MONTGOMERY FAMILY TRUST,

3:06-CV-00056-PMP-VPC
Base File

11 v.
12

3:06-CV-00145-PMP-VPC

13 ETREPPID TECHNOLOGIES, L.L.C.,
14 WARREN TREPP, and the UNITED STATES
15 DEPARTMENT OF DEFENSE,

**OBJECTIONS OF NON-PARTY
DEBORAH A. KLAR TO THE AUGUST
7, 2009 MINUTE ORDER OF
MAGISTRATE JUDGE [DOC. #1114]**

16 **AND ALL RELATED MATTERS.**

(Expedited Treatment Requested)

17 Deborah A. Klar ("Ms. Klar"), by and through counsel, Gary R. Goodheart, Esq., of Jones
18 Vargas, pursuant to 28 U.S.C. § 636(b) and Local Rule IB 3-1(a), submits her written objections to
19 the minute order dated August 7, 2009 re evidentiary objections (Doc. 1114) (the "Minute Order")
20 entered in Case No. 3:06-CV-00056-PMP-VPC, *Montgomery v. ETreppid et al.*, (the "Trade Secret
21 Litigation") by United States Magistrate Judge Valerie P. Cooke.

22 Pursuant to 28 USC § 636(b)(1)(A), "a judge of the court may reconsider any pretrial
23 matter" heard and determined by a magistrate judge "where it has been shown that the magistrate
24 judge's order is clearly erroneous or contrary to law." *See also* Local Rule IB 3-1(a).

25 These objections are based upon the memorandum of points and authorities below, all

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1 papers and exhibits on file herein, and any oral argument this Court sees fit to allow at a hearing on
2 this matter.

3 Dated this 17th day of August, 2009.

4 JONES VARGAS

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7 By: /s/ Gary R. Goodheart
8 GARY R. GOODHEART, ESQ.
9 Nevada Bar # 1203
10 3773 Howard Hughes Parkway
11 Third Floor South
12 Las Vegas, Nevada 89169
13 Telephone: (702) 862-3300
14 Facsimile: (702) 737-0069
15 ATTORNEYS FOR DEBORAH KLAR

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 On July 1, 2009, Ms. Klar filed a motion (Doc. # 1106) requesting that the Court rule on the
18 evidentiary objections filed and served on May 13, 2008 by Liner Yankelevitz Sunshine &
19 Regenstreiff LLP (“Liner”) (Doc. #601) (“Liner Evidentiary Objections”) in response to the Motion
20 for Sanctions which was the subject of the now-stayed order of Magistrate Judge Valerie P. Cooke
21 dated March 31, 2009 (Doc. # 985). In response to Ms. Klar’s motion, Magistrate Judge Cooke
22 issued a Minute Order on August 7, 2009 (Doc. # 1114) stating that Michael Flynn shall have until
23 August 21, 2009 to respond to the Liner Evidentiary Objections filed more than a year ago. The
24 Minute Order further states that “[a] reply, if any, shall be filed on or before Monday, August 31,
25 2009.” It is respectfully submitted that Magistrate Judge Cooke’s Order is clearly erroneous and
26 contrary to law for at least the following reasons.

27 First, the Liner Evidentiary Objections were filed on behalf of the Montgomery Parties,
28 including Dennis and Brenda Montgomery. Both have filed for bankruptcy. The automatic stay, in
section 362(a) of the Bankruptcy Code, is the bankruptcy equivalent of a temporary injunction
against virtually all creditor activity that might have the effect of advancing the creditor's interest at
the expense of the debtor or property of the debtor's estate. Michael Flynn is a creditor of Dennis

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89169
Tel: (702) 862-3300 Fax: (702) 737-7705

1 and Brenda Montgomery. Accordingly, it appears that the Minute Order was entered in violation of
 2 section 362(a)(1) of the Bankruptcy Code.

3 Second, pursuant to the Order of Magistrate Judge Cooke of January 23, 2008 [Doc. 419 at
 4 3], the parties in the Trade Secret Litigation were specifically directed that "Documents styled as
 5 'objections to evidence' are not allowed, and counsel are cautioned not to file such papers in the
 6 future. To the extent counsel object to evidence, those objections may be included in points and
 7 authorities, subject to the page limitations prescribed by Local Rule 7-4." Thereupon, specific
 8 objections to evidence were made in the points and authorities of Mr. Montgomery's Opposition to
 9 the Motion for Sanctions filed by non-party Michael Flynn, Esq., Doc. # 601.

10 Mr. Flynn's response to the Liner Evidentiary objections was required to be filed
 11 simultaneously with Mr. Flynn's reply to the Montgomery Parties' Opposition, Doc. # 601.
 12 Pursuant to Nevada LR 7-2, therefore, Mr. Flynn's reply was required to be filed by May 27, 2008.
 13 *See Doc. 603* There is no reason Mr. Flynn should be afforded an opportunity to supplement his
 14 reply at this late date. That is particularly true where, as here, Magistrate Judge Cooke has already
 15 made her findings and recommendations to the Court. Having failed to so respond, Mr. Flynn has
 16 now waived his opportunity to do so.

17 Third, the motion filed by Ms. Klar with the Court sought a determination by the Court with
 18 respect to the Liner Evidentiary Objections in connection with the Court's ruling on the Objections
 19 filed in response to the findings and recommendations of Magistrate Judge Cooke, Doc. #985.
 20 Magistrate Judge Cooke chose not rule on the Liner Evidentiary Objections before filing Doc.
 21 #985.

22 Ms. Klar and the other non-parties whom Magistrate Judge Cooke recommended be
 23 sanctioned, whom have been required to incur substantial legal fees filing Objections in response to
 24 Doc. #985, should not now be required to incur additional legal fees to start that process anew. But
 25 that will be the onerous burden imposed if (i) Mr. Flynn is given an opportunity now to respond to
 26 the Liner Evidentiary Objections, to which the non-parties undoubtedly will have to reply; and (ii)
 27 Magistrate Judge Cooke then rules on the Liner Evidentiary Objections and issues a decision to

1 which the non-parties will then be required to file in the event they disagree with Magistrate Judge
2 Cooke's decision or how that decision may impact the Objections currently before the Court.

3 There is no provision in the federal or local rules authorizing the piecemeal ruling by a
4 magistrate judge on motions presented for the magistrate judge's initial determination. Further,
5 there is no provision in the federal or local rules authorizing the filing of a reply to any aspect of a
6 motion after a magistrate judge has issued and submitted to the district court judge a
7 recommendation on that motion and objections have been filed by the persons affected by the
8 magistrate judge's recommendation. Any order permitting the piecemeal ruling on motions or
9 allowing a reply to a motion considered by a magistrate judge, after objections to the magistrate
10 judge's recommendation have been fully briefed, adversely affect the orderly administration of
11 justice and prejudice the rights of the parties. Here, the same result would obtain.

12 **VIII. CONCLUSION**

13 Based upon the foregoing, Ms. Klar requests that this Court vacate the Minute Order issued
14 by Magistrate Judge Cooke on August 7, 2009 [Doc. 1114]. The time for Mr. Flynn to respond to
15 Ms. Klar's Motion for Ruling on Evidentiary Objections, Doc. 1106, has now elapsed as of July 16,
16 2009, and the Motion should stand submitted and unopposed.

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18 DATED this 17th day of August, 2009.

19 JONES VARGAS
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22 By: /s/ Gary R. Goodheart
23 GARY R. GOODHEART, ESQ.
24 Nevada Bar # 1203
25 3773 Howard Hughes Parkway
26 Third Floor South
27 Las Vegas, Nevada 89169
28 Telephone: (702) 862-3300
Facsimile: (702) 737-0069
ATTORNEYS FOR DEBORAH KLAR

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89169
Tel: (702) 862-3300 Fax: (702) 737-7705

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing
3 Procedures, I certify that I am an employee of JONES VARGAS, and that the foregoing document
4 was served via electronic service on August 17, 2009 to the following parties:

5 Gregory W. Addington greg.addington@usdoj.gov, joanie.silvershield@usdoj.gov,
6 judy.farmer@usdoj.gov

7 J. Stephen Peek speek@hollandhart.com, clein@hollandhart.com, dbergsing@hollandhart.com,
8 dsagert@hollandhart.com, intaketeam@hollandhart.com, mdalluge@hollandhart.com

9 Jerry M Snyder jsnyder@hollandhart.com, Intaketeam@hollandhart.com,
10 btoriyama@hollandhart.com, carnold@hollandhart.com, ckelb@hollandhart.com,
cpulsipher@hollandhart.com

11 John J Frankovich jfrankovich@mcdonaldcarano.com

12 Leigh T Goddard lgoddard@mcdonaldcarano.com, dsmith-power@mcdonaldcarano.com,
13 pmiller@mcdonaldcarano.com

14 Mark H. Gunderson kgunderson@gundersonlaw.com

15 Richard Segerblom rsegerblom@lvcoxmail.com, tsegerblom@gmail.com

17 Ronald J Logar Zachary@renofamilylaw.com, Eric@renofamilylaw.com

18 Bridget Robb Peck bpeck@lrlaw.com, jmoulian@lrlaw.com

19 Debbie Leonard dshosteck@mcdonaldcarano.com, pmiller@mcdonaldcarano.com

20 Carla DiMare cdimare@worldnet.att.net

22 Carlotta P Wells carlotta.wells@usdoj.gov

23 Michael James Flynn mjfb@msn.com

24 Adam G Lang alang@hollandhart.com, btoriyama@hollandhart.com, eford@hollandhart.com,
intaketeam@hollandhart.com

26 Brian M Heberlig bheberlig@steptoe.com

27 Robert A Ayers rayers@steptoe.com

28 Reid H Weingarten rweingarten@steptoe.com

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89169
Tel: (702) 862-3300 Fax: (702) 737-7705

1 Ryan M. Lapine rlapine@linerlaw.com
2 Deborah A. Klar DKLAR@LINERLAW.COM, dswinson@linerlaw.com,
3 lwerderitch@linerlaw.com, ntorrecillas@linerlaw.com, stoy@linerlaw.com
4 Raphael O. Gomez raphael.gomez@usdoj.gov
5 Tuneen E. Chisolm tchisolm@linerlaw.com, cdraper@linerlaw.com
6 Shane M Biornstad sbiornstad@hollandhart.com, ckelb@hollandhart.com
7 Robert E Rohde brohde@rohdelaw.com, brohde@rohdelaw.com, jertel@rohdelaw.com
8 Gregory G. Schwartz gschwartz@rohdelaw.com
9 Ellyn S. Garofalo egarofalo@linerlaw.com, mwilcox@linerlaw.com
10 Richard J Mooney rmooney@linerlaw.com, pbransten@linerlaw.com,
11 tyasmoothlarsen@linerlaw.com
12 Heather Ristau heather.ristau@bingham.com
13 Marshall B. Grossman marshall.grossman@bingham.com
14 Roland Tellis roland.tellis@bingham.com
15 Randall J. Sunshine rsunshine@linerlaw.com, gtanzini@linerlaw.com
16 Ronald Logar zachary@logarpulver.com
17
18 **3:06-cv-56 Notice has been delivered by other means to:**
19
20 Opspring, LLC
21 600 106th Avenue NE, Ste 210
22 Bellevue, WA 98004-5045
23
24 Edra Blixseth
25 42-765 Dunes View Rd
26 Rancho Mirage, CA 92270-4311
27
28

/s/ Barbara Seed
An employee of Jones Vargas

JONES VARGAS
3773 Howard Hughes Parkway - Third Floor South
Las Vegas, Nevada 89169
Tel: (702) 862-3300 Fax: (702) 737-7705